

ENTERED

April 28, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARK ANTHONY DISHMAN, JR.,

§

Plaintiff,

§

V.

§

CIVIL ACTION NO. 2:22-CV-00258

§

C.O. COX, *et al.*,

§

Defendants.

§

ORDER ADOPTING AMENDED MEMORANDUM & RECOMMENDATION

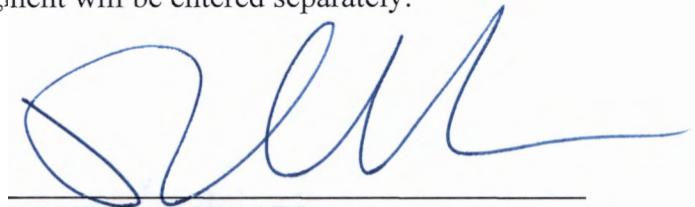
Before the Court is Magistrate Judge Jason Libby's amended Memorandum and Recommendation ("M&R"). (D.E. 30). The M&R withdraws the December 15, 2022 M&R, (D.E. 17), and recommends dismissing all Plaintiff's claims as frivolous and/or for failure to state a claim on which relief may be granted. (D.E. 30, p. 1, 15). The M&R further recommends the dismissal of this case count as a strike for the purposes of 28 U.S.C. § 1915(g). *Id.* at 1, 15. This amended M&R is largely a result of the magistrate judge's review of evidence that Defendant Cox submitted to support his motion for summary judgment. *See id.* at 10–11 (examining D.E. 25-1 and D.E. 25-2). Defendant Cox moved for summary judgment, in part, on qualified immunity grounds. *See* (D.E. 25, p. 4–5, 6–8, 12–13). Plaintiff did not respond to Defendant Cox's motion for summary judgment. *See* LR 7.4 ("Failure to respond to a motion will be taken as a representation of no opposition.").

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the magistrate judge's M&R is clearly erroneous or contrary to law. *United*

States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Badaiki v. Schlumberger Holdings Corp.*, 512 F. Supp. 3d 741, 743–44 (S.D. Tex. 2021) (Eskridge, J.).

Having reviewed the proposed findings and conclusions of the magistrate judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **VACATES** its previous order adopting the magistrate judge's initial M&R, (D.E. 28), and **ADOPTS** the amended M&R in its entirety, (D.E. 30). Plaintiff's claims are **DISMISSED**. (D.E. 1). Further, the Court **ORDERS** that dismissal of this case count as a strike for purposes of 28 U.S.C. § 1915(g). The Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov. Defendant Cox's motion for summary judgment is **DENIED without prejudice as moot**. (D.E. 25). A final judgment will be entered separately.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
April 28, 2023